IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

WP(C).No. 2844 of 2007(L)

PETITIONER:

M/S.FANTACY SALES CORPORATION,
NILAMBUR (OOTTY) ROAD, MANJERI, MALAPURAM DISTRICT
REPRESENTED BY N.VALEED, PARTNER.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.),
SRI.K.M.FIROZ.

RESPONDENTS:
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1. **THE SALES TAX INSPECTOR,**
   OFFICER IN CHARGE OF THE CHECK POST,
   COMMERCIAL TAX CHECK POST, WALAYAR, PALAKKAD DIST.

2. **THE COMMERCIAL TAX INSPECTOR,**
   COMMERCIAL TAX CHECK POST, BANGARA,
   MANJESHWAR, KASARGOD DISTRICT.

3. **THE SALES TAX OFFICER,**
   DEPARTMENT OF COMMERCIAL TAXES,
   MANJERI.

4. **THE COMMISSIONER OF COMMERCIAL TAXES,**
   PUBLIC BUILDING, MUSEUM JUNCTION,
   THIRUVANANTHAPURAM- 695 033.

5. **THE STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

BY SPL. GOVT. PLEADER (TAXES) SRI. V.V. ASOKAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/02/2007,ALONG WITH W.P.(C). NO. 2840/2007 AND CONNECTED CASES, THE COURT ON 08/03/2007 DELIVERED THE FOLLOWING:

W.P.(C). NO.2844/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE CIRCULAR NO. 50 OF 2006 DTD. 18/12/2006.

EXT.P.2: COPY OF THE CIRCULAR NO. 53 OF 2006 DTD. 22/12/2006.

EXT.P.3: COPY OF THE DETENTION NOTICE NO. AT. 384A/06-07 DTD. 15/01/2007 ALONG WITH INVOICE.

EXT.P.4: COPY OF THE DETENTION NOTICE NO. AT 1071/06-07 DTD. 15/01/2007 ALONG WITH INVOICE.

EXT.P.5: COPY OF THE ORDER OF THIS HON'BLE COURT IN W.P. NO. 2336 OF 2007 DTD. 19/01/2007.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

W.P.(C) NOS.34390 & 34662/2006, 80, 134, 293, 411,511, 606, 680, 851, 952, 991, 1189, 1191, 1361, 1372, 1431, 1442, 1449, 1454, 1456, 1464, 1465, 1478, 1482, 1492, 1493, 1494, 1503, 1529, 1532, 1539, 1609, 1639, 1685, 1692, 1698, 1715, 1716, 1717, 1718,
1945, 1949, 1970, 1976, 2095, 2146, 2148, 2194, 2278, 2281, 2288, 2292, 2318, 2336, 2377, 2381, 2382, 2396, 2512, 2531, 2536, 2537, 2538, 2539, 2606, 2667, 2689, 2768, 2772, 2773, 2789, 2796, 2828, 2840, **2844**, 2878, 2903, 2904, 2907, 2911, 2922, 2923, 2924, 2980, 2983, 3009, 3036, 3062, 3069, 3076, 3079, 3081, 3082, 3087, 3090, 3092, 3093, 3094, 3095, 3099, 3188, 3199, 3203, 3204, 3220, 3221, 3227, 3281, 3345, 3461, 3465, 3471, 3472, 3473, 3474, 3500, 3543, 3566, 3619, 3620, 3621, 3622, 3623, 3632, 3645, 3738, 3777, 3795, 3797, 3798, 3800, 3803, 3804, 3805, 3807, 3813, 3828, 3937, 3946, 3949, 3950, 3959, 3962, 4098, 4189, 4206, 4236, 4246, 4277, 4287, 4315, 4343, 4355, 4455, 4459, 4480, 4582, 4587, 4613, 4616, 4699, 4766, 4767, 5305, 5306, 5307, 5315, 5318, 5319, 5475, 5476, 5485, 5493, 5494, 5495, 5496, 5508, 5550, 5744, 5748, 5758, 5798, 5829, 5861, 5950, 5951, 6078, 6092, 6104, 6113, 6114, 6115, 6126, 6127, 6128, 6129, 6136, 6250, 6262, 6268, 6269, 6276, 6297, 6409, 6424, 6437, 6622, 6646, 6651, 6752, 6816, 6823, 6824, 6852, 6855, 6982, 6985, 6992, 6997, 7005, 7173, 7174, 7175, 7329, 7334, 7346, 7545, 7550, 7661, 7733 & 7738/2007

JUDGMENT

The constitutional validity of sub-section (16A) of Section 47 of the Kerala Value Added Tax Act and the sustainability of two circulars issued

by the Commissioner of Commercial Taxes under the said provision are the points, that arise for decision in these writ petitions. Since same points arise for decision in all these writ petitions, they are heard and disposed of by this common judgment. W.P.(C) No.2844/2007 is treated as the main case.

W.P.(C) No.2844/2007:

2. The petitioner, which is a firm, is a dealer in glass sheets. It is an assessee on the files of the 3rd respondent, Sales Tax Officer, Manjeri under the Kerala Value Added Tax Act (hereinafter referred to as the KVAT Act) and the Central Sales Tax Act. The 4th respondent Commissioner of Commercial Taxes issued Circular No.50/2006, in exercise of his powers under clause (c) of sub-section (2) of Section 3 read with sub-section (16A) of Section 47 of the KVAT Act, 2003, directing to collect sales tax in advance at the border check-posts, at the time of import of certain evasion-prone commodities named therein into the State. The said circular dated 18.12.2006 is marked as Ext.P1 in the writ petition. The relevant portion of the said circular reads as follows:

> "In exercise of the powers conferred by clause (c) of sub-section (2) of section 3, read with sub-section (16A) of section 47 of the Kerala Value Added Tax Act, 2003, the undersigned, having considered it necessary to prevent evasion of tax in respect of the following evasion-prone commodities, order that tax in

respect of the estimated sales turnover shall be collected at the Check Posts at the time of import into the State at the rates specified against each commodity below:

Sl.No.	***Commodities***	***Rate of tax***
1	Marble Slabs and Tiles	20.00%
2	Granite Slabs and Tiles	20.00%
3	Ceramic Floor and Wall Tiles including vitrified tiles	20.00%
4	Lift, Elevators and Escalators	12.50%
5	Glass Sheets	12.50%
6	Cuddapah Stones, Kotta Stones, any other similar stones and slabs	12.50%
7	Readymix Concrete	12.50%
8	Generator whether assembled or not	12.50%
9	Timber	12.50%
10	Live Chicken and Chicken Meat	12.50%
11	Petroleum Products other than LPG	12.50%
12	Bitumen	4.00%

While estimating the sale value, guidelines already circulated for valuation of items such as Chicken, Timber, etc. shall be followed.

The dealers who pay advance tax as detailed above can adjust the said amount against the output tax due for the month while filing return for the respective return period.

These orders shall take immediate effect."

On the representation of the dealers, further clarifications were issued regarding the collection of sales tax in advance as per Circular No.53/2006 dated 22.12.2006. The relevant portion of the said circular, which is produced as Ext.P2 in the writ petition is extracted below:

"As per Circular No.50/2006 instructions were issued for collection of Advance Tax in respect of twelve evasion-prone commodities at the entry points in to the State such as Check Posts, Ports, Airports and Railway Stations.

Now it is brought to the notice of the Commissionerate that dealers are experiencing inconvenience for remitting tax at the entry point in respect of the consignment, especially where the entry point is far from the ordinary place of business. Suggestions have been put forth from the trade to permit them to remit the tax before the concerned assessing authority.

This issue has been examined and the following further instructions are issued. Dealers may remit the tax on the consignments in advance before the respective assessing authority if they can provide details of the consignment such as copy of the bill/invoice, vehicle number, and name of the entry point (Check Post/Port/Airport/Railway Station)

While estimating the sale price for the purpose of collecting the advance tax the assessing authority shall consider the value as disclosed in the invoice/bill, transporting charges and an estimated gross profit at 5%. In the case of stock transfer no gross profit shall be considered for the purpose of computing the sale price.

On acceptance of Advance Tax, the assessing authority shall issue a certificate which specifies:

details of bills/invoice,
name of goods,
their quantity and value as per accompanying documents,
the value adopted by him for purposes of Advance Tax,
details of the Advance Tax remitted,
and name of the entry point in to the State.

These certificates may be delivered in original or faxed to the entry point at the option of the dealer.

> The Check Post authorities shall accept such certificates and permit the consignments to be transported after satisfying the genuineness of the certificate with reference to the consignment.
>
> Assessing authorities shall maintain a register in respect of the details of certificates issued and Check Post authorities will maintain a separate register containing the details of consignments allowed on the basis of such certificates.
>
> All officers are reminded that Advance Tax remittances shall be credited under the same Head of Account as VAT. To monitor these payments a separate register shall be maintained."

3. On the strength of the above circulars, two consignments of the petitioner were detained at the check-posts and it was called upon to pay tax in advance, by issuing Exts.P3 and P4 notices dated 19.1.2007 and 22.1.2007 respectively. Feeling aggrieved by Exts.P3 and P4, this Writ Petition is filed, seeking the following reliefs:

> "i) To call for the records leading to Exhibit P3 and Exhibit P4 notices and quash the same by issuing a writ of certiorari or any other appropriate writ, direction or order.
>
> ii) To direct the first, second and third respondents to release the goods and vehicle covered by Exhibit P3 and Exhibit P4 notices and future goods and vehicles of the petitioner without detention as per Exhibit P1 and Exhibit P2 circulars by issuing a writ of mandamus or any other appropriate writ, order of direction.
>
> iii) To declare that sub-section (16A) of Section 47 of the KVAT Act and Exhibit P1 and Exhibit P2 circulars are

unconstitutional and invalid."

Pursuant to the interim order of this Court, the goods were released, on executing simple bond without sureties.

4. The petitioner seeks the above reliefs on the following grounds: Exts.P1 and P2 circulars are illegal and unconstitutional. They are not supported by any statutory provision and therefore, will be hit by Article 265 of the Constitution of India. Sub-section (16A) of Section 47 of the KVAT Act is ultra vires of the constitutional provisions concerning sales tax. Imposition, levy and collection of tax in advance before the sale is effected, is unconstitutional. The taxable event is the sale and collection of tax before the sale takes place is, therefore, unconstitutional. The provisions contained in Chapter V of the KVAT Act concerning assessment, collection or payment of tax do not authorise collection of tax in advance, by issuing a circular by the 1st respondent. Section 3(2)(c) authorises to issue only administrative instructions. The Commissioner of Commercial Taxes cannot exercise the statutory power of taxation, based on the said provision. This position is covered by the decision of the Division Bench of this Court in **Choice Plywood Industries v. State of Kerala** (2006(2) KLT 513). Sub-section (16A) of Section 47 is unconstitutional in as much as the said provision gives unlimited discretion to the

Commissioner in respect of taxation. On the strength of it, he can include any commodity under the category of evasion-prone commodities. The delegation in favour of the Commissioner is excessive and therefore, vitiated. Sub-section (16A) of Section 47 is violative of Articles 14, 19(1)(g), 246, 265 and 301 of the Constitution. The circulars are in excess of the constitutional powers of the State flowing from Entry 52 of List II of the 7th Schedule. The detention of the goods at the check-post is oppressive and illegal. The Division Bench of this Court has declared that entry tax is unconstitutional and invalid. In order to get over the said judgment, these circulars have been issued. Therefore, they are liable to be quashed. The levy is discriminatory in as much as the goods moving within the State are not subjected to such a disability. On the above grounds, the petitioner prayed for granting all the reliefs sought in the writ petition.

5. The respondents have filed a counter affidavit in W.P.(C) No.411/2007, which is one of the writ petitions, which are disposed of by this common judgment. The learned Special Government Pleader appearing for the respondents submitted that the said counter affidavit is adopted in this and other connected writ petitions. The contentions in the said counter affidavit are the following: Sub-section (16A) of Section 47 of the KVAT Act is a valid piece of legislation enacted by the State legislature in exercise

of its power under Articles 242, 245 and 246 of the Constitution of India read with Entry 54 of List II of the 7th Schedule. Entry 54 is: "Taxes on the sale or purchase of goods other than newspaper subject to the provisions of Entry 92A of List I". Entry 54 is the field of legislation. The legislature can make laws not only on the legislative entry, but on incidental matters. Such power flows from the words of Article 246. The contention that the attempt is to collect tax even before the incidence of tax, is not correct. The purport of the provision and the circulars is only to plug the evasion of tax. A genuine and honest dealer cannot have any grievance about the statutory provision and the circulars. No reasonable impediment is created as per this provision. The collection of tax in advance is not arbitrary or unreasonable. The impugned provision or circulars do not infringe the right of the petitioners under Article 14 or Article 19(1)(g) of the Constitution of India. The section does not violate any of the constitutional provisions. The petitioners have failed to dislodge the presumption of constitutionality in favour of the statute. In taxing matters, the courts must normally respect the legislative judgment. The allegation that the issuance of the circulars is to get over the decision of the Division Bench of this Court dated 18.12.2006 in O.P.No.434/1996 and connected cases, is absolutely baseless. Some dealers transport certain commodities, using the registration numbers of the

Kerala dealers. Complaints regarding clandestine transport by bogus parties have been received from honest dealers in the State. In order to prevent clandestine transport of goods into the State, circular No.50/2006 was issued. The direction to pay tax in advance cannot be termed as one amounting to collection of tax from a dealer before the incidence of tax under the KVAT Act. The investigation conducted by the Department revealed that certain goods are evasion-prone and therefore, they are included in Ext.P1 circular. To enable the Commissioner to take effective steps, Section 47 was amended, introducing sub-section (16A). The circulars were issued in public interest, to safeguard the interest of the State and also the interest of honest dealers. Ext.P2 circular was issued to minimize the inconvenience caused to the dealers in bringing goods from outside. Payment of advance tax is not a new levy. No additional liability is cast on the dealer. The incidence of tax continues to be the sale of goods. The dealers are permitted to adjust the advance tax, paid in accordance with the circulars, against the tax due during the same month. The tax paid can be adjusted towards the output tax due for the month. There is no insistence that the set off shall only be against the very same items on which advance tax was paid. The dealers can pay the tax before the assessing authorities also. No honest dealer, as stated earlier, can have any

grievance against the circulars. There is no lack of jurisdiction for the Commissioner to issue the circulars. What is attempted to be collected in advance on the strength of sub-section (16A) is only the tax payable under the KVAT Act. Nothing more is levied or collected by way of advance tax. The sub-section and the circulars only envisage prevention of evasion of tax. Therefore, they cannot be described in any way as unconstitutional. So, the respondents pray for dismissal of the writ petition.

6. Heard Dr.K.B.Mohammedkutty, learned senior counsel for the writ petitioner. I also heard M/s.V.P.Sukumar and A.Kumar, apart from other learned counsel, appearing for the petitioners in the connected writ petitions. Sri.V.V.Asokan, Special Government Pleader (Taxes) was heard on behalf of the respondents. Learned senior counsel Dr.K.B.Mohammedkutty submitted that sub-section (16A) of Section 47 of the KVAT Act authorises the Commissioner to direct payment of tax in respect of the sale of evasion-prone goods before the date prescribed for payment. He has no authority to direct payment of tax before the sale takes place. Rule 22 of the KVAT Rules prescribes that the payment of tax relating to the sale of a particular month shall be made before the 10th of the next month. As per Section 47(16A) the Commissioner can at the most direct that the tax shall be paid at any point of time after the sale and before

the 10th of the next month. Under the K.G.S.T. Rules, advance tax is confined to the month of March alone, which is to be paid before 31st of March. There is no provision in the KVAT Act to collect tax before the sale is effected. The taxable event is sale and nobody can demand sales tax before the sale takes place. Ext.P1 circular deals with tax on estimated turnover before the sale takes place. Tax is demanded before the goods reach the destination. The circulars are ultra vires of sub-section (16A) itself. The charging section is Section 6 and the charge is on the turnover, which is attained only by sale. The circular is issued in violation of the parent provision. Collection of tax must be authorised by law and not by administrative instruction or executive fiat. The power under Section 3(2)(c) of the KVAT Act is administrative in character.

7. The learned senior counsel further submitted that sub-section (16A) suffers various constitutional infirmities. Instead of conferring delegated power on the Government, it is delegated to a person. Evasion-prone commodities is a vague concept and therefore, the provision confers unbridled power on the Commissioner. Even an honest dealer, who is dealing in goods, which are labelled as evasion-prone goods, has to pay advance tax. Sub-section (16A) suffers from the vice of excessive delegation. The impugned provision is violative of Article 14 of the

Constitution of India. Further, the circulars violate the freedom of trade under Articles 19(1)(g) and 301 of the Constitution of India. The Government have no jurisdiction to stop inter-State movement of goods. The goods purchased for own use are also held liable. If there is any doubt in interpreting a taxing statute, the doubt must go in favour of the assessee, submitted the learned senior counsel.

8. Learned counsel Sri.V.P.Sukumar also adopted the contentions of learned senior counsel Dr.K.B.Mohammedkutty. The learned counsel further submitted that what is demanded under the impugned circulars is entry tax, though the nomenclature of advance tax is employed. What has been prohibited by the Division Bench of this Court, is sought to be implemented in another garb, it is submitted. In the absence of any concluded sale, there cannot be any levy and collection of sales tax. Persons who do export sale only, are also bound to pay advance tax. Evasion-prone goods are 'notified goods' in the KVAT Act. But, circular 50/2006 takes in other items also, which are not included among the 'notified goods'. By virtue of Article 265 of the Constitution, tax can be levied only under the authority of law. But, the Commissioner under the impugned circulars is trying to collect tax without the authority of law. But by virtue of Section 47(16A), the Commissioner can pre-pone the date of

payment of tax, to a day between the date of sale and the appointed day. He cannot go to a date before the date of sale. So, the impugned circulars are ultra vires of Section 47(16A) of the KVAT Act. Learned counsel Sri.A.Kumar and other learned counsel supported the above said contentions. The learned Special Government Pleader reiterated the contentions of the 4th respondent pleaded in his counter affidavit and submitted that the impugned provision and the circulars are valid. He heavily relied on the presumption of constitutionality available in favour of a legislation.

9. The learned counsel for the petitioners relied on the following decisions:- **In re Art.143, Constitution of India, etc.** (AIR 1951 SC 332), **M/s.Pannalal Binjraj v. Union of India** (AIR 1957 SC 397), **K.T.Moopil Nair v. State of Kerala** (AIR 1961 SC 552), **Atiabari Tea Co. Ltd. v. The State of Assam & Others** [(1961)1 SCR 809], **State of Punjab v. Jullundur Vegetables Syndicate** (AIR 1966 SC 1295), **M/s.Devi Das v. State of Punjab** (AIR 1967 SC 1895), **Delhi Municipality v. B.G.S. & W Mills** (AIR 1968 SC 1232), **Yogesh Trading Co. v. Intelligence Officer of Sales Tax and Others** (1970 KLT 154), **M/s.Govind Saran Ganga Saran v. S.T.Commr.** (AIR 1985 SC 1041), **State of Bihar v. Harihar Prasad**

Debuka [(1989)2 SCC 192], **M/s.Goodyear India Ltd. v. State of Haryana** (AIR 1990 SC 781), **Sudhi v. Intelligence Officer** [(1992)85 STC 337], **Puri Municipal Council v. Indian Tobacco Co. Ltd.** [(1996)1 SCC 293], **State of Kerala v. T.C.M. Co**. [1999(1) KLT 91 (SC)], **Gajanana Agencies v. State of Kerala** (2002(3) KLT 242), **State of Kerala v. Alex George** [(2005)1 SCC 299], **Reliance Generators (P) Ltd. v. State of Kerala** (2005(2) KLT 573), **Choice Plywood Industries v. State of Kerala** (2006(2) KLT 513), **State of Rajasthan v. Rajasthan Chemists Assn**.[(2006)6 SCC 773] and **Kagaz Print-N-Pack (I) P. Ltd. v. State of Haryana** [(2007)5 VST 26 (P & H)]. The learned Special Government Pleader on the other hand, relied on the decisions in **R.S. Joshi v. Ajit Mills Ltd.** [(1977)4 SCC 98], **R.K.Garg v. Union of India** [(1981)4 SCC 675], **M.R.F. Ltd. v. Asst. Commissioner** [1995(1) KLT 809 (FB)], **State of A.P. v. McDowell & Co.** (AIR 1996 SC 1627), **Union of India v. Sanyasi Rao** [(1996)219 ITR 330], **State of Bihar v. Bihar Distillery Ltd.** [(1997)2 SCC 453], **Venee Corporation. v. Commissioner of Commercial Taxes** (2002(1) KLT 456), **State of West Bengal v. E.I.T.A. India Ltd.** [(2003)5 SCC 239] and **A.B.C. (India) Ltd. v. State of Assam** [(2005)142 STC 88].

10. Section 47(16A) reads as follows:

> "47. Procedure for inspection of goods in transit:--
> (1) .....
>
> (16A) Notwithstanding anything contained in this Act or the rules made there under, the Commissioner may where he deems it necessary to prevent any evasion of tax, direct that the tax in respect of the sale of any evasion prone commodities, as may specified by him, shall be paid before the date prescribed for its payment under this Act." (Emphasis supplied)

The learned counsel for the petitioners, at the time of final hearing, did not attack the above quoted sub-section as unconstitutional, on the ground that it authorises collection of tax even before the occurrence of the taxable event. According to them, the said provision only authorises the Commissioner to issue circulars to demand tax after the taxable event, that is, the sale of goods, but before the appointed day for payment of tax by the dealer. But, I think, the said interpretation, if accepted, will make the provision meaningless. The provision is introduced to prevent evasion of tax. If the above interpretation of the petitioners that tax can be demanded only after the sale takes place, is accepted, the very purpose of the section will be defeated. If evasion of tax is to be prevented, the same can be done only by demanding tax in advance before the occurrence of the taxable event. It is true, while interpreting a taxing statute, if there is any doubt, the

same should go in favour of the assesee. But, in this case, if the interpretation advanced by the petitioners is accepted, the same will render the provision ineffective to prevent evasion of tax. So, the 'golden rule' of interpretation has to be followed. The 'golden rule' is dealt with in Principles of Statutory Interpretation (G.P.Singh – Eighth Edition), in the following words:

> "VISCOUNT SIMON, L.C., said: 'The golden rule is that the words of a statute must prima facie be given their ordinary meaning'. Natural and ordinary meaning of words should not be departed from 'unless it can be shown that the legal context in which the words are used requires a different meaning'. Such a meaning cannot be departed from by the judges 'in the light of their own views as to policy' although they can 'adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy'. For a modern statement of the rule one may refer to the speech of LORD SIMON OF GLAISDALE in a recent case where he said: 'Parliament is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further'."

Maxwell on The Interpretation of Statutes deals with the golden rule in the following words:

> "The so-called 'golden rule' is really a modification of the literal rule. It was stated in this way by Parke B.: 'It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.'. 'If', said Brett L.J., 'the inconvenience is not only great, but what I may call an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if you read it in a manner in which it is capable, though not its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning'."

In the light of the above principles, sub-section (16A) has to be read as authorising the Commissioner to direct payment of tax before the taxable event takes place. Otherwise, the purpose of the sub-section, namely, prevention of evasion of tax will be defeated. Therefore, the circulars have to be held intra vires of sub-section (16A).

11. The petitioners submit, if such an interpretation is accepted, it will make sub-section (16A) unconstitutional. They point out that the taxable event is the sale. The Constitution authorises the legislature to impose tax on sale. So, the demand of tax even before the sale takes place is unauthorised by the constitutional provisions, it is submitted by the

petitioners. Though, in support of this submission, several decisions were relied on by the petitioners, they mainly relied on the decision of the Apex Court in **State of Rajasthan v. Rajasthan Chemists Assn.** [(2006)6 SCC 773]. The question that arose before the Supreme Court in that case was whether the measure to which the rate of tax was to be applied on single point transaction of sale of any formulation (medicine) by the wholesaler to the retailer could be something notional, which was not related to the subject of tax, namely, the Maximum Retail Price which could be chargeable subsequent to the taxing event, by a retailer. The High Court held that where the price is the basis for measuring tax, it must relate to the actual transaction of sale and not the price at which sale might take place in future. The Supreme Court upheld the decision of the High Court. The learned counsel for the petitioners relied on the following portion of the judgment:

> "12. Significantly, the Court observed about the substance of the levy as under: (Budh Prakash Case, (1955)1 SCR p.248)
>
> 'The substance of the matter is that the sales tax is a levy on the price of the goods, and the reason of the thing requires that such a levy should not be made, unless the stage has been reached when the seller can recover the price under the contract.'
>
> 13. The aforesaid decision makes it clear that subject to 'tax on sales of goods' in Entry 48 of List II of the Seventh

Schedule of the 1935 Act providing for legislative field of sale of goods ought to be confined to levy of tax on sales of goods as defined in the Sales Act and in substance, it is a levy on price of goods and the State Legislature does not have the power to enlarge the definition of sales by creating a legal fiction and levy tax on a sale which has not come into existence.

Xxxx xxxx xxxx xxxx

15. After referring to the definition of the expression 'sale of goods' from the times of Roman law and the law in England, this Court (at SCR pp.396-97) culled out and approved the following principle stated in Benjamin's book Sale of Goods:

'Hence it follows that, to constitute a valid sale, there must be a concurrence of the following elements viz.

(1) parties competent to contract; (2) mutual assent; (3) a thing, the absolute or general property in which is transferred from the seller to the buyer; and (4) a price in money paid or promised.'

xxxxx xxxxx xxxxx xxxxx

32. It was a case in which weight of the commodity was made the basis for levy of the tax. But, price of goods was approved to be the usual meaning of levy of tax on sale of goods. It does not deviate from the basic principle that a tax of any nature is determined ex hypothesi on occurrence of the taxing event. Its actual computation and collection takes place later on through the machinery provided. However, the determination of charge ex hypothesi instantly on occurrence of the taxing event which inheres into it that measure of tax is integrally connected with occurrence of the taxing event and is not postponed to a later date.

Xxxxx xxxxx xxxxx xxxxx

40. However, this case did not lay down the principle that where price is the measure to which rate of tax can be applied, it can be something else other than the price

component of taxing event, whether agreed by mutual consent or as regulated by statutes.

Xxxxx xxxxx xxxxx xxxxx

53. By devising a methodology in the matter of levy of tax on sale of goods, law prohibits taxing of a transaction which is not a completed sale and also confines sale of goods to mean sale as defined under the Act. This cannot be overridden by devising a measure of tax which relates to an event which has not come into existence when tax is ex hypothesi determined, much less which can be said to be a completed sale and which cannot be the subject of legislation providing tax on 'sale of goods' by transplanting a sum related to as 'likely price' to be charged for subsequent sale to be taxed by the devise of measuring tax for the completed transaction which has become subject of tax.

Xxxxx xxxxx xxxxx xxxxx

55. If the legislation can provide for a measure of tax on the subject of tax by substituting any notional value, which at no point of time becomes part of or related to subject of tax viz sale of goods, then the fact that it is related to MRP loses its significance altogether. If this is permitted to be done, the legislation can provide for any measure the purpose of applying the rate of tax, whether it is founded on MRP or any other fixed value which the legislature may provide will make little difference. It is not contended by the appellant that even if the measure is not relatable to MRP, it can substitute any value as a measure of tax. Subject of tax is not the goods or goods sold, but a transaction of 'sale of goods' as defined under the Sales Act."

12. The learned Special Government Pleader on the other hand, relied on the decision of the Apex Court in **State of West Bengal v. E.I.T.A. India Ltd.** [(2003)5 SCC 239]. In the said decision, the Apex

Court upheld the validity of certain provisions of the West Bengal Sales Tax Act, which included two sub-sections providing for payment of tax in advance. The relevant provisions are sub-sections (7) and (8) of Section 11, which are quoted below for convenient reference:

> "11. Liability to pay tax on sales by casual trader:--
>
> (1).....
>
> (7) If the Commissioner or any person appointed under sub-section (1) of Section 3 to assist him is satisfied that a casual trader may become liable to pay tax under sub-section (1) in respect of any goods, he may, in order to secure payment of tax that may become due upon determination of tax under sub-section (3) and for reasons to be recorded in writing, demand from such casual trader an amount in advance equivalent to the amount of tax that may become due from him after determination, or security for an equivalent amount, after taking into consideration the saleable value of such goods.
>
> (8) The amount in advance equivalent to the amount of tax that may become due from a casual trader after determination after taking into consideration the **saleable value** of the goods as aforesaid shall, on demand under sub-section (4), be paid by him in advance and shall be adjusted with the amount of tax due from him; and the security, if any, for the equivalent amount shall, on demand, be furnished by him, and shall be refunded to him, in such manner and on such terms and conditions as may be prescribed."

The tax payable in advance has to be computed based on the "saleable value"of the goods. So, the tax in advance is authorised to be collected before the actual sale takes place. The Apex Court upheld the above

provisions, on the ground that they were enacted to prevent evasion of tax, which will come under the legislative field covered by Entry 54, List II of the 7th Schedule to the Constitution. The relevant portion of the judgment reads as follows:

> "16. A careful reading of sub-section (7) makes it clear that the Commissioner or any person appointed under sub-section (1) of Section 3 to assist him, on being satisfied that a casual trader may become liable to pay tax under sub-section (1) thereof in respect of any goods, may with a view to secure payment of tax that may become due upon determination under sub-section (3) and for reasons to be recorded in writing, demand from such casual trader an amount in advance equivalent to the amount of tax that may become due from him after determination, or security for an equivalent amount after taking into consideration the saleable value of such goods. It does not postulate payment of advance tax. **What it aims is an amount in advance equivalent to the amount of tax that may become due from a casual trader or security for an equivalent amount depending upon the saleable value of the goods in question. There is thus a clear nexus between the amount in advance or security and the levy of impost on the casual trader. The provision is meant to ensure collection of tax. Sub-section (8) provides for payment of the amount in advance or the security, if any, referred to in sub-section (7) by a casual trader on demand under sub-section (4) at the time bringing any goods, except those specified in Schedules I and IV or those notified under Section 10(2) of the Act, for being adjusted with the amount of tax due from him and for refund after due adjustment in the prescribed manner.**
>
> 17. It is, thus, clear that sub-sections (3), (4), (5), (6), (7) and (8) are part of the same scheme aimed at prevention of evasion of tax payable under the Act. Sub-sections (10) and (12) are consequential provisions. Sub-section (10) empowers

the Commissioner or the authorised officer to seize the goods with containers or other packing materials, if any, when he has reason to believe contravention of the restrictions and conditions provided in sub-sections (4) and (5) or non-compliance with sub-sections (6) and (8). In the case of seizure of goods under sub-section (10), imposition of penalty is authorised under sub-section (11). Sale of the seized goods in open auction on failure to pay the penalty is dealt with in sub-section (12). It is a common ground that these sub-sections stand or fall along with sub-sections (5), (7) and (8). We have indicated above that the impugned sub-sections of Section 11 are enacted to prevent evasion of tax payable under the Act. The main challenge against those provisions is on the ground of legislative competence.

18. On the issue of legislative competence, we shall refer to Entry 54 of List II of the Seventh Schedule to the Constitution which is the field of State legislation for imposing taxes on the sale or purchase of goods, other than newspaper. This entry is subject to the provisions of Entry 92-A of List I of the Seventh Schedule to the Constitution. It is well settled that the State Legislature, while providing for levy of impost, has power to provide for incidental matters, including measures for prevention of evasion of tax.

19. In Nand Lal Raj Kishan v. CST [(1962)1 SCR 283] the validity of Section 8-A of the Bengal Finance (Sales Tax) (Delhi Amendment) Act, 1956 was assailed in a writ petition filed under Article 32 of the Constitution. That provision enables the Commissioner of Sales Tax to demand security from dealers for payment of tax. The contention of the petitioner was that the section conferred undefined, unlimited and unrestricted power to the Commissioner and that there was no limit fixed for the amount of security. It was also urged that no enquiry was contemplated before fixing the amount of security. The validity of Section 8-A was upheld on the view that it did not give any unlimited or unrestricted

power to the Commissioner and that it was subject to the condition that it must appear to him to be necessary to demand security for the proper realisation of tax. It was observed that the power to levy tax included the power to impose reasonable safeguards for collecting it and, therefore, demanding security for the proper payment of tax was neither an arbitrary condition nor an unreasonable restriction. In our view, this judgment does not help the respondents for reasons more than one. Firstly, Section 8-A of that Act, as it stood at that time was upheld by the Constitution Bench as valid and secondly, in the instant case, the impugned provisions embody ample safeguards for a transporter of goods as also for an owner or lessee of a warehouse, enquiry is contemplated for determination of the amount in advance or security authorised to be demanded which, in any event, cannot be more than the amount of tax that could be levied in respect of the goods in question on such a person. It supports the case of the appellant.

20. In Balaji v. ITO (AIR 1962 SC 123) the petitioner challenged the provisions of Section 16(3)(a)(i) of the Income Tax Act, 1922 in this Court under Article 32 of the Constitution of India. The petitioner and his wife started a business in partnership and admitted their minor sons to it. While computing the total income of the petitioner for the purpose of assessment to income tax, the Income Tax Officer included the share of the income of the wife and the minor sons under the said provision. It was held that entries in the legislative lists were not powers but fields of legislation and that the widest-possible import and significance should be attached to them. So interpreting, it was observed that the relevant entry must cover such legislation as the impugned provision intended to prevent the evasion of tax; it is a settled proposition that in matters of taxation, the power to legislate includes the incidental power to legislate for evasion of tax for which the entry provides.

21. In Khyerbari Tea Co. Ltd. v. State of Assam (AIR 1964 SC 925) the question before the Constitution Bench was,

whether the Assam Taxation (on Goods Carried by Road or on Inland Waterways) Act (Assam Act 10 of 1961) was constitutionally valid. It was held that the entries in the three lists in the Seventh Schedule must be given the widest-possible interpretation and that the power conferred on the legislature to levy tax must be widely construed so as to include the power to select the taxable articles to fix the rates, to prescribe the machinery for recovery, to prevent evasion and to prescribe the procedure for determining the amount payable by any individual. It was added that Entry 56 of List II in giving the legislature the power to enact the impugned Act, required that the tax must be levied only against the owner of the goods that were carried or against persons who carried them. If the tax was really levied on goods carried, the legislature was free to prescribe the machinery for its recovery. In that view of the matter, it was held that sub-sections (1) and (2) of Section 3 of that impugned Act, which imposed the tax and made the producer liable to pay the same could not, therefore, be impugned on the ground of legislative incompetence.

22. In Tripura Goods Transport Assn. v. Commr of Taxes [(1999)2 SCC 253] Sections 29, 30, 32, 36-A, 38-B and 2(b) of the Tripura Sales Tax Act, 1976 (98 of 1976) were assailed on the ground of lack of legislative competence. Those provisions required the appellants therein to obtain a certificate of registration and to comply with various other formalities prescribed under the Act and the rules made thereunder. A learned Single Judge of the Gauhati High Court had dismissed the writ petition. That order was upheld by the Division Bench of the High Court in appeal. On further appeal to this Court, it was contended that being transporters, they were not trading in sale or purchase of any goods and therefore, they could not be held to be 'dealers' within the meaning of the Act and as such the impugned provisions which laid certain obligation on them were beyond the legislative competence of the State Legislature under Entry 54 of List II of the Seventh Schedule to the Constitution. Negativing the contention it was held that if the

> legislature makes any ancillary or subsidiary provisions which incidentally transgresses over its jurisdiction for achieving the object of such legislation, it would be a valid piece of legislation. The entries in a legislative list should not be read in a narrow or pedantic sense but must be given their fullest meaning, the widest amplitude and be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended. Thus, the provision incorporating mechanism to seal all loopholes of escape and casting obligation on someone to perform certain acts to achieve this objective was held to be a valid provision.
>
> 23. In State of Rajasthan v. D.P.Metals [(2002)1 SCC 279] the provisions of the Rajasthan Sales Tax Act, 1994 (22 of 1995) for levy of penalty on the person in charge of the goods for non-compliance with certain statutory provisions or for submission of false or forged documents or declaration were questioned as being beyond the legislative competence of the State. Rejecting the contention, it was laid down that Entry 54 of List II of the Seventh Schedule to the Constitution has to be construed liberally. It was been observed that the settled position in law is that provisions to check evasion of tax are within the legislative competence of the States under Entry 54 of List II, therefore provisions which made the imposition of tax efficacious or to prevent evasion of tax are within the legislative competence of the State.
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> 24. From the above discussion it follows that the aforementioned impugned provisions which are intended to prevent the evasion of tax payable under the Act are within the legislative competence of the State and are intra vires Entry 54 of List II of the Seventh Schedule to the Constitution."

13. Going by the above decision, I feel that the challenge against the provision to collect tax in advance has to be repelled. Though the amount

demanded in this case is loosely described as advance tax, it is in effect a payment in advance towards the tax that may become payable in future. The Apex Court in the above decision upheld the provisions enabling demand of tax in advance while bringing the goods to West Bengal by casual traders. The learned counsel for the petitioners tried to distinguish this decision by contending that the decision relates to the liability of casual traders. The significance of the decision is that it upholds the power to demand advance payment towards tax when the goods are brought to the State, that is, before the taxable event, namely, the sale. The decision in **State of Rajasthan v. Rajasthan Chemists Assn.** [(2006)6 SCC 773] reiterates the well settled position that the taxable event is the sale of goods. It also further lays down that the actual sale price alone can be the basis for levying tax. In this case also, the taxable event is the sale. The actual tax will be assessed only after the sale takes place and that too, based on sale price. But, in the case of evasion-prone goods, it is difficult to trace the goods and in some cases, the dealer also, after they cross the border. So, the consignee dealer of the goods has to be tied down to them, to avoid tax evasion. Therefore, advance collection is made towards tax. To avoid evasion of tax, enactment of such provisions are constitutionally permissible, in view of the decision of the Apex Court in **State of West**

Bengal v. E.I.T.A India Ltd. [(2003)5 SCC 239]. The decision in **Rajasthan Chemist Association** (2006) 6 SCC 773) does not stand in the way of collection of tax in advance. So, the interpretation given to sub-section (16A) of Section 47 that it is authorising collection of tax in advance will not make it unconstitutional. When the statute authorises issuance of such circulars, there is nothing illegal with Exts.P1 or P2.

14. The petitioners attack the impugned provision as vitiated by excessive delegation. According to them, it does not lay down any legislative policy properly. The legislative policy has also been delegated to the Commissioner, it is submitted. Every one familiar with collection of sales tax knows that certain goods are evasion-prone. The "notified" goods are admittedly evasion-prone. Experience may show that some other goods are also evasion-prone. The contention of the petitioners that the identification of the goods is left to the Commissioner without any guidelines, cannot be accepted. Going by the scheme of the Act and the Rules, goods which can be subjected to tax under the KVAT Act alone can be notified under sub-section (16A). The words "evasion-prone goods" cannot be said to convey a very vague concept without providing any guidelines. As stated earlier, all those associated with collection of tax knows what are evasion-prone goods. If any particular type of goods which

are not evasion-prone is also included in the notification, the affected persons can challenge the same. So, the contention that unfettered and unbridled power is conferred on the Commissioner, cannot be accepted. He can only include evasion-prone goods, which are well known in trade circles. The contention that the legislature has not laid down any norms to guide the Commissioner and therefore, there is excessive delegation, also cannot be accepted. The words "evasion-prone goods" give sufficient guidelines to the Commissioner, while selecting the goods. The Apex Court had occasion to consider the challenge against a provision in the Madras Co-operative Societies Act, based on excessive delegation, in **Registrar of Co-op. Societies v. K.Kunjabmu** [(1980)1 SCC 340]. The relevant portion of the said judgment reads as follows:

> "3. .....The Parliament and the State Legislatures are not bodies of experts or specialists. They are skilled in the art of discovering the aspirations, the expectations and the needs, the limits to the patience and the acquiescence and the articulation of the views of the people whom they represent. They function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies which are better left to better equipped full time expert executive bodies and specialist public servants. Parliament and the State Legislatures have neither the time nor the expertise to be involved in detail and circumstance. Nor can Parliament and the State Legislatures visualise and provide for new, strange, unforeseen and unpredictable situations arising from the complexity of modern life and the ingenuity of modern man.

That is the raison d'etre for delegated legislation That is what makes delegated legislation inevitable and indispensable. The Indian Parliament and the State Legislatures are endowed with plenary power to legislate upon any of the subjects entrusted to them by the Constitution, subject to the limitations imposed by the Constitution itself. The power to legislate carries with it the power to delegate. But excessive delegation may amount to abdication. Delegation unlimited may invite despotism uninhibited. So, the theory has been evolved that the legislature cannot delegate its essential legislative function. Legislate it must by laying down policy and principle and delegate it may to fill in detail and carry out policy. The legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute, the preamble, the scheme or even the very subject-matter of the statute. If guidance there is, wherever it may be found, the delegation is valid. A good deal of latitude has been held to be permissible in the case of taxing statutes and on the same principle a generous degree of latitude must be permissible in the case of welfare legislation, particularly those statutes which are designed to further the Directive Principles of State Policy.

4. In Harishankar Bagla v. State of Madhya Pradesh (AIR 1954 SC 465), the question arose whether Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, which empowered the Central Government to make orders providing for the regulation or prohibition of the production, supply and distribution of essential commodities and trade and commerce therein was void for excessive delegation. The Court said it was not and observed:

'.....the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination

or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct. In the present case the legislature has laid down such a principle and that principle is the maintenance or increase in supply of essential commodities and of securing suitable distribution and availability at fair prices. The principle is clear and offers sufficient guidance to the Central Government in exercising its powers under Section 3'.

5. In Edward Mills Co. Ltd., Beawar v. State of Ajmer (AIR 1955 SC 25) this Court considered the question whether Section 27 of the Minimum Wages Act under which power was given to the Government to add to either part of the schedule any employment in respect of which it was its opinion that minimum wages should be fixed exceeded the limits of permissible delegation and was, therefore, unconstitutional. The Court held that the legislative policy was apparent on the face of the enactment which aimed at the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour. The intention of the legislature was not to apply the Act to all industries but only to those industries where by reason of unorganised labour or want of proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular industry were very low. In enacting Section 27 there was, therefore, no delegation of essential legislative power.

6. In Pandit Banarsi Das Bhanot v. State of Madhya Pradesh (AIR 1958 SC 909) this Court held that it was not unconstitutional for the Legislature to leave it to to the Executive to determine details relating to the working of taxation laws such as the selection of persons on whom the tax is to be laid, the rates at the which it is to be charged in respect of different classes of goods and the selection of goods in respect of which exemption from taxation might be granted, etc. etc.

7. In Sardar Inder Singh v. State of Rajasthan (AIR 1957 SC 510) the validity of Section 15 of the Rajsathan

(Protection of Tenants) Ordinance which authorised the government to exempt any person or class of persons from the operation of the Act was upheld and the argument that there was impermissible delegation of legislative power was repelled on the ground that the preamble to the Ordinance set out with sufficient clarity the policy of the Legislature.

8. In Vasantlal Maganbhai Sanjanwala v. State of Bombay (AIR 1961 SC 4), Section 6(2) of the Bombay Tenancy and Agricultural Lands Act was challenged as permitting excessive delegation of legislative power as it enabled the government to fix a lower rate of the minimum rent payable by the tenants of lands situate in any particular area or to fix such rate on any suitable cause as it thought fit. This Court noticed that the Act was undoubtedly a beneficient measure, as shown by the preamble which stated that the object of the Act was to improve the economic and social conditions of peasants and ensure the full and efficient use of land for agriculture. Bearing in mind the preamble and the material provisions of the Act, it was held that the power delegated was within permissible limits.

9. In Jyoti Pershad v. Administrator for the Union Territory of Delhi (AIR 1961 SC 1602), Rajagopala Ayyangar, J., made some useful observations which may be extracted here:

'In regard to this matter we desire to make two observations. In the context of modern conditions and the variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provisions for them. The Legislature, therefore, is forced to leave the authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. This is the ratio of delegated legislation, and is a process which has come to stay, and which one may be permitted to observe is not without its advantages. So long therefore as the Legislature indicates, in the operative provisions of the statute with certainty, the

policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis , either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate. The second is that if the power or discretion has been conferred in a manner which is legal and constitutional, the fact that Parliament could possibly have made more detailed provisions, could obviously not be a ground for invalidating the law'.

10. In Mohammad Hussain Gulam Mohammed v. State of Bombay (AIR 1962 SC 97), the question was about the vires of Section 29 of the Bombay Agricultural Produce Markets Act. It gave power to the State Government to add to, or amend, or cancel any of the items of agricultural\ produce specified in the schedule in accordance with prevailing local conditions. The attack was on the ground that legislative power had been delegated to an extent not permissible. The Court while noticing that Section 29 itself did not provide for any criterion for determining which item of agricultural produce should be put into the schedule, nevertheless upheld its vires on the ground that guidance was writ large in the various provisions and the scheme of the Act. It was observed that in each case the State Government had to consider whether the volume of trade in the produce was of such a nature as to give rise to wholesale trade so as to merit inclusion in the schedule.

11. Let us now turn to Section 60 of the Madras Co-operative Societies Act, 1932 whose vires is in question and which is as follows:

'60. The State Government may, by general or special order, exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be

specified in the order'.

The provision is a near Henry VIII clause. But to give it a name is not to hang it. We must examine the preamble, the scheme and other available material to see if there are any discernible guidelines. Sure the Co-operative Societies Act is a welfare legislation. Its preamble proclaims:

'Whereas it is expedient further to facilitate the formation and working of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to co-operative societies in the State of Madras'.

12. The policy of the Act is there and so are the guidelines. Why the legislation? 'To facilitate the formation and working of Co-operative Societies.' Co-operative Societies, for what purpose? 'For the promotion of thrift, self-help and mutual aid.' Amongst whom? 'Amongst agriculturists and other persons with common economic needs.' To what end? 'To bring about better living, better business and better methods of production.' The objectives are clear, the guidelines are there. There are numerous provisions of the Act dealing with registration of societies, rights and liabilities of members , duties of registered societies, privileges of registered societies, property and funds of registered societies, inquiry and inspection, supersession of committee of societies, dissolution of societies, surcharge and attachment, arbitration, etc. We refrain from referring to the details of the provisions except to say that they are generally designed to further the objectives set out in the preamble. But, numerous as the provisions are, they are not capable of meeting the extensive demands of the complex situations which may arise in the course of the working of the Act and the formation and the functioning of the societies. In fact, the too rigorous applications of some of the provisions of the Act may itself

> occasionally result in frustrating the very objects of the Act instead of advancing them. It is to provide for such situations that the Government is invested by Section 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the objects of the Act. Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications. The power given to the government under Section 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear.
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> 13. We are, therefore, of the view that Section 60 is not void on the ground of excessive delegation of legislative power."

In the light of the above principles laid down by the Apex Court, it has to be held that the impugned provision is valid. The legislature cannot be blamed for not naming the evasion-prone goods. Their list may change from time to time. So, the Commissioner has been rightly authorised to specify them. The words 'evasion-prone goods' give sufficient guidelines to him. So, the challenge of excessive delegation is repelled.

15. Now what remains to be examined are the contentions of the petitioners with reference to other provisions of the Constitution. They submit, the impugned provision violates Articles 14 and 19(1)(g) of the Constitution. The classification, to demand tax in advance, of evasion-prone goods, on the ground that they come from outside the State, is made

on a rational basis. Unless tax in advance is demanded, there is likelihood of evasion of tax. So, the classification is made on a sound basis, to achieve the object of safeguarding the interest of revenue by preventing evasion of tax. It is unnecessary to impose advance tax on goods moving inside the State. So, the contentions made relying on Article 14 of the Constitution cannot be accepted. Further, it is well settled that the legislature enjoys a greater latitude for classification in the field of taxation (See the decision of the Apex Court in **Steel Worth Ltd. v. State of Assam** (AIR 1964 SC 370)**.** Demanding tax in advance cannot be said to be an action, infringing the fundamental rights under Article 19(1)(g) of the Constitution of India. Demand and collection of tax may cause some inconvenience. But, the same cannot be described as violation of any fundamental right. Same is the case of attack, relying on Article 301 and also on the ground of lack of competence of the State to tax on inter-State movement of goods. By demanding tax in advance, the State does not impose or levy any tax, which it is not competent to levy. It is only a measure to prevent evasion of tax, which the State is legitimately entitled to collect. It is not an attempt to tax on inter-State sale. The free flow of goods is also not prevented by demanding tax in advance. Some inconvenience caused at the check-posts cannot be described as violating the rights under Article 301 of the

Constitution of India. If such a contention is accepted, all the check-posts should be abolished, so as to provide unhindered movement of goods. Such a right cannot be claimed under Article 301.

16. Further, in the matter of taxation statutes, the courts should respect the legislative judgment and should not lightly interfere with them. See the decision of the Apex Court in **R.K.Garg v. Union of India** [(1981) 4 SCC 675 (CB)]. The relevant portion of the judgment reads as follows:

> "7. .....the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.
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> 8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed

than in Morey v. Doud (354 US 457) where Frankfurter, J. said in his inimitable style:

'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events —self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.'

The Court must always remember that 'legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry' ; 'that exact wisdom and nice adaption of remedy are not always possible' and that 'judgment is largely a prophecy based on meagre and uninterpreted experience'. Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture v. Central Reig Refining Company [338 US 604 (1950)] be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on

> its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.
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> Xxxxxxx xxxxxxx xxxxx xxxxx
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> 19. .....The Court must always bear in mind the constitutional proposition enunciated by the Supreme Court of the United States in Munn v. Illinois (94 US 13), namely, 'that courts do not substitute their social and economic beliefs for the judgment of the legislative bodies'. The Court must defer to legislative judgment in matters relating to social and economic policies and must not interfere, unless the exercise of legislative judgment appears to be palpably arbitrary. The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theater Company v. City of Chicago [228 US 61 (1912)]:
>
> 'The problems of government are practical ones and may justify, if they do not require, rough accommodation, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review'."(Emphasis supplied)

In view of the above legal position and for other reasons set out hereinabove, the challenge against the constitutional validity of Section 47 (16A) of the KVAT Act is repelled. The validity of the impugned circulars

are upheld. The timing of the issuance of the circulars, that is immediately after the rendering of the judgment by this Court, in the "Entry Tax Cases" cannot be a ground to condemn the circulars, if they are otherwise valid. The individual grievance caused to certain dealers cannot be a ground for declaring the provision or the circulars unconstitutional. A dealer, whose entire sales are in the course of export may not be liable to pay tax. If advance tax is collected from him and he does not make any local sale and therefore, not liable to pay tax, he can claim refund of the same. In that event, the State shall refund the amount paid by him. Such individual inconveniences or grievances can never be pressed into service, to attack a legislation. I have not dealt with in this judgment, some of the decisions cited by both sides, as they were not strictly relevant. In the result, the writ petition fails and it is dismissed.

W.P.(C) NOS.34390 & 34662/2006, 80, 134, 293, 411, 511, 606, 680, 851, 952, 991, 1189, 1191, 1361, 1372, 1431, 1442, 1449, 1454, 1456, 1464, 1465, 1478, 1482, 1492, 1493, 1494, 1503, 1529, 1532, 1539, 1609, 1639, 1685, 1692, 1698, 1715, 1716, 1717, 1718, 1945, 1949, 1970, 1976, 2095, 2146, 2148, 2194, 2278, 2281, 2288, 2292, 2318, 2336, 2377, 2381, 2382, 2396, 2512, 2531, 2536, 2537, 2538, 2539, 2606, 2667, 2689, 2768, 2772, 2773, 2789, 2796, 2828, 2840, 2878, 2903, 2904, 2907, 2911, 2922, 2923, 2924, 2980, 2983, 3009, 3036, 3062, 3069, 3076, 3079, 3081, 3082, 3087, 3090, 3092, 3093, 3094, 3095, 3099, 3188, 3199, 3203, 3204, 3220, 3221, 3227, 3281, 3345, 3461, 3465, 3471, 3472, 3473, 3474, 3500, 3543, 3566, 3619, 3620, 3621, 3622, 3623, 3632, , 3645, 3738, 3777, 3795, 3797, 3798, 3800, 3803, 3804, 3805, 3807, 3813, 3828, 3937, 3946, 3949, 3950, 3959,

3962, 4098, 4189, 4206, 4236, 4246, 4277, 4287, 4315, 4343, 4355, 4455, 4459, 4480, 4582, 4587, 4613, 4616, 4699, 4766, 4767, 5305, 5306, 5307, 5315, 5318, 5319, 5475, 5476, 5485, 5493, 5494, 5495, 5496, 5508, 5550, 5744, 5748, 5758, 5798, 5829, 5861, 5950, 5951, 6078, 6092, 6104, 6113, 6114, 6115, 6126, 6127, 6128, 6129, 6136, 6250, 6262, 6268, 6269, 6276, 6297, 6409, 6424, 6437, 6622, 6646, 6651, 6752, 6816, 6823, 6824, 6852, 6855, 6982, 6985, 6992, 6997, 7005, 7173, 7174, 7175, 7329, 7334, 7346, 7545, 7550, 7661, 7733 & 7738/2007:

17. In the light of the judgment in W.P.(C) No.2844/2007, these writ petitions are also dismissed.

8th March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/